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EXAMINER

THAI, HANH B

ART UNIT

PAPER NUMBER

2171

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/733,767

Applicant(s)

SEAMON, JOSEPH

Examiner

Hanh B Thai

Art Unit

2171

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 04 December 2003.

2a) ☐ This action is FINAL.

2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-12, 14-18 and 20-29 is/are pending in the application.

4a) Of the above claim(s) 13 and 19 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-12, 14-18 and 20-29 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____

4) ☐ Interview Summary (PTO-413) Paper No(s). _____

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

Art Unit: 2171

This is in response to the Request for Continued Examination filed December 4, 2003.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed December 4, 2003 have been fully considered but they are not persuasive.

In the remarks, applicant argued in substance that

(A) Prior Arts references combination does not teach or suggest all of the claim limitations of the independent claims (claims 1, 14, 20, 28-29).

As to point (A), in response to applicant's argument that the references fail to disclose certain features of applicant's invention, it is noted that the language of the limitations in claim 1 can be given broad and reasonable interpretation. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

ortega teaches a system and method for exposing popular categories of browse tree comprising types of categories and items based on various pre-defined subjects and classifications (see col.4, line 16-67, Ortega). Ortega, however, does not explicitly disclose "alternative classification of the data item.

In the related art, Axaopoulos teaches a system and method for storing and searching buy and sell information of a marketplace including a tree data structure of a ser category nodes and paths." Axaopoulos discloses two different navigation paths that lead to the same classification

Art Unit: 2171

“Automobiles” of the same data item “Saturn” (see Fig. 3-4, 20-21; col. 4, line 34-43; col. 11, line 10-43 and col. 15, line 42-63, Axaopoulos) and Axaopoulos further discloses in Fig. 4 traversing two paths, each path including the different nodes (node 430 different from node 224, Fig. 4).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teachings of Ortega and Axaopoulos to include an alternative path of the same data item and two paths, each path including the different nodes correspond to “a first structure of categories does not include the second category and the second structure of categories does not include the first category” as taught by Axaopoulos it would improve the search technique for consumers to express their desire for particular goods and services and to integrate those features with an improved communication system for supporting electronic commerce (see col. 3, lines 17-21, Axaopoulos).

(B) The applicant argued that the combination of the references would not suggest to one skilled in the art to obtain the claimed invention.

As to point (B), Examiner believes that the motivation was given above to combine Ortega and Axaopoulos is sufficient. In addition, Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Art Unit: 2171

Moreover, the test for obviousness is not whether the features of one reference may be bodily incorporated into the other reference to produce the claimed subject matter but simply what the references make obvious to one of ordinary skill in the art.

"(T)he proper inquiry should not be limited to the specific structure shown by the references, but should be into the concepts fairly contained therein, and the overriding question to be determined is whether those concepts would suggest one skilled in the art the modification called for by the claims", In re Bascom, 109 USPQ 98, 100 (CCPA 1956). "What appellants overlook is that it is not necessary that the inventions of the references be physically combinable to render obvious the invention under review." In re Sneed, 218 USPQ 385, 389 (CAFC 1983). "The argument that one cannot bodily incorporate the two set of references because in one the speed of the air-fuel mixture is allegedly subsonic, whereas in the other it is sonic, is irrelevant. The test for obviousness is not whether the features of one reference may be bodily incorporated into another reference. Rather, we look to see whether the combined teachings render the claimed subject matter obvious", In re Wood and Eversole, 202 USPQ, 171, 174 (CCPA, 1979).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 14-18, 20-23 and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ortega et. al. (U. S. Patent no. 6,489,968) in view of Axaopoulos et al. (U.S. Patent no. 6,286,002).

Regarding claim 1, Ortega discloses a method of constructing a category structure within a database, the method including:

- defining a first structure of categories to classify a data item, the first structure including at least a first category (see col. 3, lines 12-18, Ortega). “first structure of categories” corresponds to “higher-level categories”.
- defining a second structure of categories of the data item (see col. 3, lines 21-28, Ortega), the second structure including at least a second category, wherein the second category is associated with the first category “second structure of categories” corresponds to “low-level categories”, and wherein the first category comprises a first category path defined in terms of the first structure of categories and the second category comprises a second category path defined in terms of the second structure of categories (see col. 7, lines 6-24, Ortega).

Ortega, however, does not explicitly disclose “alternative classification of the data item” and “the first structure of categories does not include the second category and the second structure of categories does not include the first category”. Axaopoulos, on the other hand, discloses two different navigation paths that lead to the same classification “Automobiles” of the same data item “Saturn” (see Fig. 20-21 and col. 15, lines 42-63, Axaopoulos). Therefore, Axaopoulos discloses the limitation of the claimed invention. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ortega to include an alternative path of the same data item as taught by Axaopoulos. The motivation of doing so would have been to improve search technique for consumers to express their desire for particular goods and

Art Unit: 2171

services and to integrate those features with an improved communication system for supporting electronic commerce (see col. 3, lines 17-21, Axaopoulos).

Regarding claim 2, Ortega/Axaopoulos combination further discloses defining the first and second

structures of categories as respective first and second hierarchies of categories (see col. 3, lines 12-24 and col. 4, lines 43-45, Ortega).

Regarding claims 3 and 4, Ortega/Axaopoulos combination further discloses the first and second category is a leaf category of the first and second hierarchy of categories (see col. 4, lines 53-61, Ortega).

Regarding claim 5, Ortega/Axaopoulos combination further discloses defining the second category (C2, Fig. 1B) to point to the first category (C1, Fig. 1B, Ortega).

Regarding claim 6, Ortega/Axaopoulos combination further discloses the second structure includes defining the second hierarchy such that navigation of the second hierarchy to locate data items classified as being attributed to the second category locates data items classified as being attributed to the first category of the first hierarchy (see col. 4, lines 43-52, Ortega).

Regarding claim 7, Ortega/Axaopoulos combination further discloses the data item is user classifiable under the first structure of categories (C2, Fig. 1B) and is not user-classifiable under the second structure of categories (C3, Fig. 1B, Ortega).

Regarding claim 8, Ortega/Axaopoulos combination further discloses the data item is directly categorized as being within the first category of the first structure of categories and is indirectly categorized as being within the second category of the second structure of categories (see col. 4, lines 53-67 and Fig. 1B, Ortega).

Regarding claim 9, Ortega/Axaopoulos combination further discloses defining a category table including a category record for each category of the first and second structures of categories, each category record within the category table (see col.9, lines 59-62) including a category identifier, wherein a category record that describes the second category includes a category identifier (see col. 4, lines 20-23, Ortega) of a category record for the first category.

Regarding claim 10, Ortega/Axaopoulos combination further discloses the data item is a database record describing any one of a group of products and services of a transaction facilitated by a network-based transaction facility (see col. 4, lines 23-33, Ortega).

Regarding claim 11, Ortega/Axaopoulos combination further discloses the network-based transaction facility is a network-based auction facility (see col. 3, lines 29-37, Ortega).

Regarding claim 12, Ortega/Axaopoulos combination further discloses defining a third structure of categories to provide a further alternative classification of the data item, the third

Art Unit: 2171

structure including at least a third category, wherein the third category is associated with the first category of the first structure of categories (see col. 5, lines 34-45, Ortega).

Regarding claims 14 and 28, Ortega discloses a method of classifying a data item within a database, the method including:

- identifying a first category, of a first hierarchy of categories, attributed to a data item (see col. 1, lines 58-64, Ortega); and
- automatically attributing a second category, of a second hierarchy of categories, to the data item (see col. 4, lines 20-23, Ortega).

Ortega, however, does not explicitly disclose “the first and second categories are defined by respective category paths of the first and second hierarchies categories” and “the first structure of categories does not include the second category and the second structure of categories does not include the first category”. Axaopoulos, on the other hand, discloses two different navigation paths that lead to the same classification “Automobiles” of the same data item “Saturn” (see Fig. 20-21 and col. 15, lines 42-63, Axaopoulos). Therefore, Axaopoulos discloses the limitation of the claimed invention. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ortega to include an alternative path of the same data item as taught by Axaopoulos. The motivation of doing so would have been to improve search technique for consumers to express their desire for particular goods and services and to integrate those features with an improved communication system for supporting electronic commerce (see col. 3, lines 17-21, Axaopoulos).

Regarding claim 15, Ortega/Axaopoulos combination further discloses the first and second categories are associated within a description of categories within the database (see col. 4, lines 29-33, Ortega). “book title” is description of the book category.

Regarding claim 16, Ortega/Axaopoulos combination further discloses the first category is attributed to the data item by a user during a user classification operation and the second category is dynamically attributed to the data item during a user navigation operation of the second hierarchy of categories, wherein the dynamic attributing of the second category is performed by identification of an association between the first and second categories (see col. 4, lines 43-67 and col. 4, lines 20-33, Ortega).

Regarding claim 17, Ortega/Axaopoulos combination further discloses the first category is directly recorded within the database as being attributed to the data item and the second category is recorded as being linked to the first category within the database (see col. 4, lines 53-67, Ortega).

Regarding claims 18 and 26, Ortega/Axaopoulos combination further discloses the first and second categories are each leaf categories of the respective first and second hierarchies of categories (see col. 4, lines 59-67, Ortega).

Regarding claims 20-21 and 29, Ortega discloses a method of facilitating location of a data item within a database, the method including:

Art Unit: 2171

- facilitating user-navigation of a first category structure to select a first category (see col. 1, lines 34-50, Ortega);
- identifying a second category (Outdoors/Events/Olympics) of a second category structure as being linked to the first category (Books/Sports) of the first category structure (col. 1, lines 42-57); and
- identifying data items of the second category responsive to the selection of the first category of the first category structure (see col. 1, line 58 to col. 2, line 2, Ortega).

Ortega, however, does not explicitly disclose “the first and second categories are defined by respective category paths of the first and second hierarchies categories” and “the first structure of categories does not include the second category and the second structure of categories does not include the first category”. Axaopoulos, on the other hand, discloses two different navigation paths that lead to the same classification “Automobiles” of the same data item “Saturn” (see Fig. 20-21 and col. 15, lines 42-63, Axaopoulos). Therefore, Axaopoulos discloses the limitation of the claimed invention. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ortega to include an alternative path of the same data item as taught by Axaopoulos. The motivation of doing so would have been to improve search technique for consumers to express their desire for particular goods and services and to integrate those features with an improved communication system for supporting electronic commerce (see col. 3, lines 17-21, Axaopoulos).

Regarding claim 22, Ortega/Axaopoulos combination further discloses the presenting of the at least one user interface comprises generating at least one markup language document (250, Fig. 2).

Regarding claim 23, Ortega/Axaopoulos combination discloses that any one of a group of navigation aids including a drop-down menu, a selection of check boxes, a selection of radio buttons, an embedded Java application and an embedded ActiveX control (see col. 5, line 57 to col. 6, line 3, Axaopoulos).

Regarding claim 27, Ortega/Axaopoulos combination further discloses the step of communicating the identified data items within a markup language document (250, Fig. 2) transmitted over a network (Fig. 2 of Ortega).

Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ortega et al. (U. S. Patent no. 6,489,968) in view of Axaopoulos et al. (U.S. Patent no. 6,286,002), and further view of Wu et al. (U. S. Patent no. 6,381,607).

Regarding claims 24-25, Ortega/Axaopoulos combination discloses all of the claimed subject matter as discussed above, except Ortega/Axaopoulos does not disclose the first record includes a pointer to a second record within the category table describing the second category. Ouellette, however, discloses this limitation (see col. 6, lines 15-24, Wu).). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ortega to include

Art Unit: 2171

a pointer as taught by Wu. The motivation of doing so would have been to organize keys and indices to facilitate better retrieval of information from a catalog (see col. 2, lines 20-23, Wu).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh B Thai whose telephone number is 703-305-4883. The examiner can normally be reached on 8 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 703-308-1436. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Hanh Thai HT
Art Unit 2171
December 18, 2003

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